

1 ROB BONTA
Attorney General of California
2 SHARON A. GARSKE
Supervising Deputy Attorney General
3 SEAN LODHOLZ
D. MARK JACKSON
4 OLENA LIKHACHOVA
TRACE O. MAIORINO
5 Deputy Attorney General
State Bar No. 179749
6 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
7 Telephone: (415) 510-3594
Fax: (415) 703-5843
8 E-mail: Trace.Maiorino@doj.ca.gov
Attorneys for Defendants Newsom and CDCR

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13
14 **JOHN ARMSTRONG, et al.,**

15 Plaintiffs,

16 v.

17 **GAVIN NEWSOM, et al.,**

18 Defendants.
19
20
21
22
23
24
25
26
27
28

4:94-cv-02307-CW

**DEFENDANTS' REPLY TO
PLAINTIFFS' RESPONSE TO COURT
EXPERT'S SECOND REPORT
REGARDING TREATMENT OF
PEOPLE WITH DISABILITIES AT
SUBSTANCE ABUSE TREATMENT
FACILITY [ECF NOS. 3500, 3510]**

TABLE OF CONTENTS

		Page
1		
2		
3	Introduction	1
4	I. Defendants’ Further Response to the Court Expert’s August 24, 2023	
5	Report and Recommendations.	2
6	A. CDCR Continues to Clarify Policy on Providing Class Members	
7	with Non-Medical Assistive Devices as Reasonable	
8	Accommodations and Therefore No Further Court Order Is	
9	Required.	2
10	B. CDCR Continues to Work with Stakeholders to Accommodate	
11	Blind and Low Vision Class Members.	5
12	C. CDCR Continues to Develop Policies to Accommodate Deaf and	
13	Hard-of-Hearing Class Members.	7
14	1. Announcements.....	8
15	2. Caption Phones	9
16	3. CART	10
17	4. Hearing Aids	11
18	II. CCHCS Continues to Work With CDCR to Address Class Members’	
19	Needs at SATF.	12
20	III. The Court Should Deny Plaintiffs’ Request for an Order to Require CDCR	
21	to Seek a Court Order for the Suspension of State Law Because it is	
22	Premature, Unwarranted, and Potentially Violates the PLRA.	12
23	Conclusion	14
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Page

CASES

<i>Coleman v. Schwarzenegger</i> 922 F. Supp. 2d 882 (E.D. Cal. 2009).....	12, 13
---	--------

STATUTES

United States Code, Title 18	
§ 3626(a)(1)(B)	12
§ 3626(a)(1)(B)(iii)	13
§ 3626(a)(3)(E)(ii).....	13
The Americans with Disabilities Act (ADA).....	<i>passim</i>

INTRODUCTION

Plaintiffs’ requests for a “SATF Remedial Plan,” court-ordered status reports, and arbitrary deadlines to deploy specific programs that fail to appreciate the inherent obstacles in correctional management should be denied because, in part, they far exceed and are out-of-step with the Court Expert’s recommendations. The treatment of people with disabilities at Substance Abuse Treatment Facility (SATF) has improved, as recognized by the Court Expert. The Court Expert recognized that the culture at SATF has improved thanks, in part, to the efforts of new leadership and the hard work of health care staff. (ECF No. 3500 at 4.) The Court Expert also found that the delivery of accommodations to people with disabilities had improved—citing the reduced likelihood of lost durable medical equipment (DME) and medication, improved process for collecting and handling patient requests for medical care, issuing, repairing, and replacing DME, and delivery of medical supplies like incontinence supplies. (*Id.* at 6-12.) Defendants appreciate the Court Experts’ thoughtful evaluation of the issues and focused recommendations on areas that still require improvement.

As detailed in Defendants’ original response (ECF No. 3504) and in more detail below, Defendants continue to make concrete improvements on providing accommodations to deaf and hard-of-hearing and blind and low-vision individuals, and clarifying its policies on accommodating people who require non-medical assistive devices, to address the Court Expert’s findings and recommendations. Plaintiffs’ mischaracterization that Defendants only have a “plan to make a plan” does not fairly or accurately explain the improvements made, tangible plans in place, and efforts taken by CDCR. Defendants continue their commitment to providing class members equal access to programs, services, and activities. Because Defendants have addressed the Court Expert’s concerns in his second report and have concrete plans to implement further changes, further Court intervention is not necessary.

///

///

I. DEFENDANTS' FURTHER RESPONSE TO THE COURT EXPERT'S AUGUST 24, 2023 REPORT AND RECOMMENDATIONS.

A. CDCR Continues to Clarify Policy on Providing Class Members with Non-Medical Assistive Devices as Reasonable Accommodations and Therefore No Further Court Order Is Required.

Great strides have been made to continue providing accommodations to class members at SATF, which includes tracking of non-medical devices as reasonable accommodations. The Court Expert was clear in his factual finding, "that SATF has improved the delivery of accommodations to people with disabilities." (ECF No. 3500 at 4.) Despite the Court Expert's factual finding, Plaintiffs paint a distorted picture of the conditions by arguing that current SATF policy denies reasonable accommodations, results in arbitrary distinctions, and results in inconsistent applications of the policy. (ECF No. 3510 at 19-23.) Instead of focusing on the improvements cited by the Court Expert, Plaintiffs offer hyper-critical assessments of the current status at SATF, complain about accommodation-denials in a few instances, and seek an order from this Court not contemplated by the Court Expert's recommendations. (ECF No. 3500 at 12-13, 17; ECF No. 3510 at 22, 21.) If the current status at SATF were as bleak as Plaintiffs report it to be, then it would be expected that the Court Expert would have made different recommendations than the ones given. Accordingly, the Court should deny Plaintiffs' request for a further order.

The Court Expert's second report offered very narrow recommendations to the parties that included Defendants responding to Plaintiffs' April 11, 2023 letter and to further clarify existing policy on how class members are to request non-medical assistive devices and whose responsibility it is to review those requests and obtain the devices. (ECF No. 3500 at 12-13, 17.) CDCR continues to work on both.

CDCR previously affirmed that it will respond to Plaintiffs' April 11, 2023 letter, in the near future, while continuing to diligently work on issues raised in Plaintiffs' letter, such as an electronic system to track non-medical assistive devices necessary to accommodate class members' disabilities within the Strategic Offender Management System (SOMS), and other issues. (ECF No. 3504-1 at 4.) As of September 11, 2023, the Department of Adult Institutions,

1 submitted a change request to SOMS to create a system for tracking devices and supplies
2 approved via the Reasonable Accommodation Panel (RAP), but not prescribed by medical
3 providers. (Suppl. Decl. Houston ¶ 4.) This change will occur within approximately one year
4 due to several priority change requests submitted to the SOMS team. (*Id.*) In the interim,
5 medical providers will continue to input DME receipts for these items to be captured within
6 SOMS. (*Id.*) In addition, the RAP chairperson will continue to document these approvals via a
7 CDCR 128-B form. (*Id.*) This system will address Plaintiffs' concerns that class members are
8 inappropriately deprived of non-medical assistive devices because of staff incorrectly identifying
9 these items as mere property and failing to recognize that these items are reasonable
10 accommodations under the ADA.

11 The Court Expert's recommendation to clarify existing policy is well taken. (ECF No.
12 3500 at 4.) CDCR recognizes the need for clarity concerning the process for accommodating
13 people with disabilities who require non-medical assistive devices as required under the ADA and
14 the remedial plan. Plaintiffs exaggerate the current status at SATF by offering isolated class-
15 member experiences to create an inaccurate depiction of the conditions at SATF. By doing so,
16 Plaintiffs seemingly ignore the fact that as part of his investigation, the Court Expert interviewed
17 17 class members, received 60 survey responses from class members that asked "whether
18 disability accommodations at SATF had improved, stayed the same, or gotten worse" and
19 concluded "that SATF has improved the delivery of accommodations to people with disabilities."
20 (*Id.* at 4-5.) Any assertion that SATF routinely forces class members to pay out-of-pocket for
21 reasonable accommodations is not accurate because CDCR remains committed to providing
22 incarcerated people with reasonable accommodations for their disabilities to ensure equal access
23 to its programs, services, and activities, in compliance with the ADA and the remedial plan via
24 the Request for Reasonable Accommodation (CDCR Form 1824) and the RAP. (ECF No. 3504-1
25 at 3; Suppl. Houston Decl. ¶ 5.)

26 In response to the Court Expert's recommendation that the SATF local operating procedure
27 (SATF LOP 403 (VI)(C)(4)b(4)-(5)) explain who will purchase/pay for the non-medical devices
28 that are deemed a reasonable accommodation under the ADA (ECF No. 3500 at 19) and to

1 address Plaintiffs' complaints about forcing class members to purchase some accommodations
2 (ECF No. 3510 at 19-23), CDCR has determined that effective immediately statewide, when RAP
3 approves a Reasonable Accommodation that allows access to programs, services, and activities,
4 CDCR will incur the cost associated with the reasonable accommodation when no reasonable
5 alternative exists, unless such an accommodation creates an undue burden under the ADA.
6 (Suppl. Houston Decl. ¶ 5.) CDCR will revise the applicable local operating procedures to
7 comport with the foregoing policy. (*Id.*)

8 As previously noted, to ensure consistent application of the process, CDCR has taken
9 several proactive steps, including, the reeducation of non-medical members of the RAP on their
10 independent duty to provide a reasonable accommodation to an incarcerated person with a
11 disability even if the accommodation is not deemed medically necessary in accordance with
12 current policy stated, in part, in the October 28, 2022 memorandum titled "Reiteration of
13 Reasonable Accommodation Requirements." (ECF No. 3504-1 at 3-4; ECF No. 3453-1 at 9-10,
14 180-181.) CDCR also intends on providing additional guidance to institutions regarding the
15 process of obtaining non-medical assistive devices through the next update to the ADA Desk
16 Reference Manual. (*Id.*) Although dismissed by Plaintiffs (ECF No. 3510 at 20), the Court
17 Expert recognized its value by noting, "members of the RAP also received focused training
18 regarding the provision of DME as a reasonable accommodation in situations where medical staff
19 deemed the DME was not medically necessary," and, based on his observations, RAP members
20 appeared to "have a clear command of this concept." (ECF No. 3500 at 9.) Moreover, well-
21 established and complete systems are in place to redress any inappropriate denial of any such
22 accommodation, including the inmate grievance process, individual advocacy program,
23 accountability orders, and monitoring tours, to eliminate any need for a further Court order as
24 requested by Plaintiffs. (Suppl. Houston Decl. ¶ 5.)

25 Defendants have concrete plans to address the Court Expert's recommendations and
26 continue to work towards addressing the identified issues. Accordingly, no further Court order is
27 required.

B. CDCR Continues to Work with Stakeholders to Accommodate Blind and Low Vision Class Members.

Plaintiffs’ hyperbole falsely asserting that Defendants have “steadfastly refused” to develop a viable plan to ensure sight-impaired class members are able to independently read and write (ECF No. 3510 at 6) is inaccurate and ignores the stakeholders’ efforts to accommodate these class members with up-to-date technology. Further, such a representation by Plaintiffs gives rise to the question of whether the blind and low-vision workgroup model is the best use of limited resources to serve this population. Plaintiffs are aware that Defendants have been diligently working to improve access to auxiliary aids that is independent from library-related limitations and includes such devices being placed in the class-member housing units. Plaintiffs’ contention that a Court ordered remedial plan is necessary because of limited access to libraries paints an incomplete picture.

In their response to the Court Expert’s Second SATF Report, Plaintiffs requested the Court to enter an order directing Defendants, “in consultation with Plaintiffs and the Court Expert, to develop a concrete plan by a date certain to comply with their obligations under the ADA, ARP, and this Court’s prior orders to ensure blind and low-vision class members at SATF have equal opportunity to read and write.” (ECF No. 3510 at 10.) As Plaintiffs are aware, Defendants have been diligently working to improve access to electronic assistive devices to accommodate class members’ reading needs outside of the prison libraries, including placement of such devices in the class-member housing units. (Suppl. Houston Decl. ¶ 7.) To ensure that electronic assistive devices that will be made available to class members within their housing units meet class members’ various needs, including variable magnification, audio via text-to-speech capability, spot-reading and reading multi-page documents, Defendants are working with vision consultants from the Western University of Health Sciences’ Eye Care Institute to identify appropriate devices and determine the optimal number and location of various devices needed to accommodate class members’ independent and private reading and writing needs. (*Id.*)

The Eye Care Institute vision consultant team includes Dr. Sukhija, the Assistant Professor at the Western University of Health Sciences, College of Optometry, who has over nine years of

1 experience in Optometry and over three years as the Chief of Vision Rehabilitation at the low
2 vision rehabilitation clinic. (Suppl. Houston Decl. ¶ 8, Ex. A.) The Eye Care Institute vision
3 consultant team also includes a blind team member, Tom Olzak, who is legally blind and serves
4 as its resource specialist. (*Id.*, ¶ 8 and Ex. B.) Mr. Olzak works with and trains blind and low
5 vision patients by lending his knowledge and experience of the various low vision devices and
6 making recommendations based on the individual's lifestyle, career, and baseline skillsets. (*Id.*,
7 Ex. B.) Defendants have been working with the Eye Care Institute consultants to identify the
8 benefits and limitations of numerous electronic assistive devices in consideration of the variety of
9 disabilities that exist amongst class members, the restrictions inherent in a correctional setting, the
10 ease of use of various devices or aids, the unavailability of internet access within class members'
11 housing units, and other factors. (Suppl. Houston Decl. ¶ 8.)

12 Despite Plaintiffs' claims to the contrary, Defendants already have a plan to ensure that
13 vision impaired class members' reading and writing needs are accommodated in compliance with
14 the ADA, the remedial plan, and this Court's prior orders. (Suppl. Houston Decl. ¶ 9.) In
15 consultation with the Eye Care Institute team, CAMU has identified two electronic assistive
16 devices that could reasonably accommodate vision impaired class members' reading and writing
17 needs outside of the prison libraries. (*Id.*) On September 27, 2023, CAMU initiated a request to
18 receive and demonstrate these assistive devices. (*Id.*) Upon receipt of these devices, the Office
19 of Correctional Safety will complete all security-related testing protocols within approximately
20 one week of receipt. (*Id.*) Upon approval of all security protocols, CAMU will initiate
21 procurement of the devices and create a policy for "check-in/check-out" use of these devices as
22 reading and writing accommodations for vision impaired class members outside of the prison
23 libraries. (*Id.*) The procurement process for these devices is expected to take approximately 90
24 days. (*Id.*) Development of the policy regarding these devices is expected to take approximately
25 two weeks, plus additional time for negotiation with Plaintiffs' counsel. (*Id.*) The issuance of
26 this policy to the field will also require a 75-day labor notification period in accordance with
27 union labor agreements. (*Id.*) Once this required period is complete and the policy regarding
28 these electronic assistive devices is issued, the selected devices will be deployed at all 11 DPV-

1 designated CDCR institutions for use by blind and low-vision class members as reading and
 2 writing accommodations outside of the prison law libraries. (*Id.*) In the meantime, CDCR staff
 3 continue to assist with reading and writing accommodations, devices are accessible in the
 4 libraries, and LED magnifiers were provided to all DPV class members and are available to all
 5 DNV class members upon request and approval by CCHCS. (*Id.*)

6 Plaintiffs also unfairly criticize the Defendants' process for repair or replacement of the
 7 assistive electronic devices placed in the library and contend that it fails to "explain which
 8 devices would be checked," does not "include anywhere to document which device" is
 9 nonoperational, and does not "appear to explain what should be done" to repair or replace
 10 devices. (ECF No. 3510 at 6-7.) Defendants have been diligently working to ensure that the
 11 assistive electronic devices located in prison law libraries are operational and available for use by
 12 the class members. (Suppl. Houston Decl. ¶ 10.) Office of Correctional Education has
 13 implemented a process and is developing a plan to ensure regular repair or replacement of
 14 malfunctioning or broken devices. (*Id.*) OCE expects to have all inoperable library devices
 15 repaired or replaced by December 2023. (*Id.*) In the meantime, the Office of Correctional
 16 Education shall guide librarians on the steps to follow if any of the electronic assistive devices
 17 located in the libraries are found to be non-operational. (*Id.*)

18 Defendants have concrete plans to address the Court Expert's recommendations and
 19 continue to work towards addressing the identified issues. Accordingly, no further Court order is
 20 required.

21 **C. CDCR Continues to Develop Policies to Accommodate Deaf and Hard-of-**
 22 **Hearing Class Members.**

23 Plaintiffs' response to these issues is stale. Citing outdated material, Plaintiffs paint an
 24 incomplete and misleading picture, ignoring tangible progress, formulated policy, and ongoing
 25 implementation of that policy. Plaintiffs' mischaracterization of Defendants' response as
 26 "nothing more than a plan to have a plan" is not just inaccurate, but it is also pays a disservice to
 27 the dozens of staff members and officials who have contributed countless hours to develop and
 28 implement new policies to accommodate class members. In proper recognition of this work,

Defendants request the opportunity to keep implementing their new policies, without arbitrary deadlines or constraints, and in continued collaboration with the Court Expert. As shown below, Defendants are well along the path to resolving the remaining deaf and hard-of-hearing issues at SATF and Court intervention is unnecessary and potentially counterproductive at this stage.

1. Announcements

Reliably providing announcements to deaf and hard-of-hearing class members has been challenging. However, Defendants' new measures are neither "recycled" nor "speculative." (ECF No. 3510 at 11.) And the use of personalized notifications is not a violation of the remedial plan and ensures class member's notice of their appointments. (ECF No. 3510 at 11; *Armstrong* Remedial Plan at 23.) To the contrary, Defendants have updated efforts to improve existing processes for notifications, including face-to-face communication and additional training for staff. (Suppl. Decl. Houston ¶ 11.) In addition to developing these existing processes, CDCR is moving forward with two new technological processes. (*Id.*)

One new process uses inmate tablets. (Suppl. Decl. Houston ¶ 11.) On September 29, 2023, SATF received approval to make individual announcements utilizing the messaging features on the tablets. (*Id.*) CDCR is finalizing a draft policy and will implement it in the coming weeks. (*Id.*) Not only will the tablets provide another avenue for communication, they will also document and provide a means to audit the notification process. (*Id.*) This will allow Defendants to show they are successfully notifying inmates of important information. (*Id.*) A draft of this policy will be provided to Plaintiffs in two weeks. (*Id.*) Once the policy is negotiated and finalized, a 75-day labor notification period is required in accordance with the union labor agreements. (*Id.*)

Another new process involves vibrating watches. (Suppl. Decl. Houston ¶ 12.) Contrary to Plaintiffs' characterization, Defendants continue to evaluate this option. (*Id.*) Although Plaintiffs identify other state correctional departments use of vibrating watches, Plaintiffs fail to address whether vibrating watches used by these other state correctional departments include alarms that cannot be turned off or deactivated. (*Id.*) As detailed in Defendants' initial response, the alarm creates a security risk that must be addressed to ensure the safety of staff and incarcerated

1 population. (ECF No. 3504-1 at 6.) On September 26, 2023, Defendants purchased an exemplar
 2 watch that may satisfy potential security concerns. (*Id.*) Defendants received the device on
 3 October 4, 2023, and will begin two weeks of security testing at SATF and at two other
 4 institutions (Central California Women’s Facility and R.J. Donovan Correctional Facility). (*Id.*)
 5 If testing is successful, Defendants will provide the vibrating watches as a reasonable
 6 accommodation to deaf and hard-of-hearing individuals at SATF and elsewhere upon request and
 7 approval. (*Id.*)

8 Defendants remain open to collaborating with Plaintiffs to improve existing notification
 9 processes and to implement the new processes for tablets and vibrating watches. (Suppl. Decl.
 10 Houston ¶ 13.) To the extent the Court wishes to monitor implementation, Defendants will
 11 provide Plaintiffs and the Court Expert with monthly updates. (*Id.*) Court intervention is
 12 unnecessary and could potentially be counterproductive since these developments are in progress
 13 and moving quickly.

14 **2. Caption Phones**

15 Plaintiffs’ characterization of phone services at SATF is similarly outdated in three main
 16 respects. First, Defendants have implemented a process for testing TTY/TDD phones on a
 17 monthly basis. (Suppl. Decl. Houston at ¶ 14.) This is still a relatively new process and class
 18 members are starting to see results. (*Id.*) Indeed, as of this writing, all TTY/TDD phones at
 19 SATF are confirmed to be working and properly functioning. (*Id.*) Defendants will regularly test
 20 the TTY/TDD phones and promptly repair nonfunctioning TTY/TDD phones to ensure continued
 21 accessibility for class members. (*Id.*)

22 Second, contrary to Plaintiffs’ description, Defendants have provided training directly to
 23 class members on how to operate the TTY/TDD phones. (ECF 3510 at 13; Suppl. Decl. Houston
 24 at ¶ 15.) This training addresses the Court Expert’s concern about relying on ADA workers (ECF
 25 No. 3500 at 4, 12), thus allowing class members to have private calls without their involvement.
 26 (Suppl. Decl. Houston at ¶ 15.)

27 Third, SATF has, in fact, rolled out caption phones. (ECF No. 3504-1 at 7; Suppl. Decl.
 28 Houston at ¶ 16.) The roll-out was communicated to class members via a tablet notification,

1 which included instructions on how to access the phones. (Suppl. Decl. Houston at ¶ 16.) In
 2 addition to these notifications, on September 21, 2023, the SATF ADA Coordinator held Inmate
 3 Advisory Council meetings at every yard to advertise the new phones. (*Id.*) CAMU has
 4 reviewed the locations of all TTY/TDD and caption phones, and concluded that the locations
 5 were fully accessible to class members. (*Id.*) SATF leadership has also confirmed that only one
 6 grievance (CDCR Form 602), and no Requests for Reasonable Accommodation (CDCR Form
 7 1824) have been submitted by the incarcerated population to indicate any issues regarding access
 8 to such phones. (*Id.*) In advance of the October 5, 2023 deaf and hard-of-hearing workgroup
 9 meeting, CDCR provided the Court Expert and Plaintiffs with the results of the TTY/TDD and
 10 caption phone surveys that addressed accessibility, location, functionality, and class-member
 11 education. (*Id.*)

12 Plaintiffs also comment on the lack of features on the tablets to accommodate deaf and
 13 hard-of-hearing class members. (ECF 3510 at 14.) While Defendants would like to reconfigure
 14 the tablets to allow greater access for deaf and hard-of-hearing class members, this is a longer-
 15 term project, which requires third-party vendor expertise because of the statewide deployment of
 16 tablets and goes beyond institutional reforms at SATF. (Suppl. Decl. Houston at ¶ 17.)
 17 Nevertheless, Defendants are committed to moving this forward at the headquarters level and as
 18 they renegotiate third-party vendor contracts. (*Id.*) In the meantime, Defendants will
 19 accommodate class members with functioning TTY/TDD phones and the new caption phones, as
 20 described above. Again, to the extent the Court wishes to monitor these measures, Defendants
 21 will continue to provide timely updates to Plaintiffs and the Court Expert.

22 3. CART

23 Plaintiffs again fail to accurately describe progress on CART, a new accommodation
 24 offered at SATF and ten other institutions as of August 24, 2023. (ECF No. 3510 at 16-19; ECF
 25 No. 3504-1 at 7.) Rather than applaud this achievement, Plaintiffs opt to highlight several minor
 26 problems with implementation and ignore recent efforts to resolve them. In truth, CART
 27 implementation is proceeding successfully.
 28

Defendants completed Phase One of implementation so that CART is currently available for all due process events at the eleven institutions. (Suppl. Decl. Houston at ¶ 18.) This phase included various forms of outreach and education, including flyers, tablet notifications, and multiple town halls. (*Id.*) While Plaintiffs point out some of the challenges in a recent town hall, they fail to mention that the video shown to class members was itself a recording of CART. (ECF No. 3510 at 17.) Nevertheless, Defendants anticipate improving and expanding on these outreach efforts as CART enters Phase Two. (Suppl. Decl. Houston at ¶ 18.)

Phase Two will expand CART to all programming areas at SATF and at the ten other institutions. (Suppl. Decl. Houston at ¶ 19.) Defendants completed the process of identifying these programming areas and tested them for internet and Wi-Fi connectivity, both of which are required for CART service, and both of which are, anticipated to be available. (*Id.*) Defendants are testing two new devices to deploy in these areas at SATF. (*Id.*) Testing in the correctional setting was completed by Enterprise Information Services (EIS) by October 4, 2023, and EIS will conduct further testing on the actual devices to be used with CART service available in those areas two weeks later. (*Id.*) Defendants are developing training materials to ensure a successful rollout. (*Id.*) In compliance with CAMU's direction, ADACs conducted town halls by September 15, 2023. (*Id.*) This included direction to utilize the recently captured demonstration video specifically for the incarcerated population. (*Id.*) In addition, staff were provided a separate video to ensure staff are also familiar with the service. (*Id.*) CDCR will develop training for all staff who facilitate the various programming (i.e., education, religious services, rehabilitative services, mental health groups) once EIS completes its required tasks. (*Id.*)

4. Hearing Aids

On September 29, 2023, CCHCS reported to CDCR that CCHCS representatives and experts, the Court Expert, and Plaintiffs, met to discuss hearing aid specifications. (Suppl. Houston Decl. at ¶ 20.) An agreement was reached as to the hearing aid specifications and the need for CCHCS to incorporate those into the scope of services and go out to bid. (*Id.*) On October 4, 2023, Plaintiffs sent a letter to CCHCS summarizing the agreement on hearing aid specifications. (*Id.*) Upon agreement by all parties of the specifications outlined in the summary,

1 it is anticipated the hearing-aid bid will be released in early November 2023, awarded in January
 2 2024, and the new services will begin in February 2023. (*Id.*) CCHCS will continue to work
 3 with Plaintiffs and the Court Expert on this matter and provide updates when available. (*Id.*)

4 **II. CCHCS CONTINUES TO WORK WITH CDCR TO ADDRESS CLASS MEMBERS’**
 5 **NEEDS AT SATF.**

6 CCHCS continues to work with the Court Expert, CDCR, and Plaintiffs to address items
 7 identified in the Court Expert’s report. (Suppl. Houston Decl. at ¶ 21.) CCHCS will continue to
 8 monitor the processes implemented to ensure sustainability. (*Id.*) CCHCS has confirmed that the
 9 rules violation report memorandum and training material for healthcare staff was sent to Labor
 10 for review. (*Id.*) CCHCS will provide an update to the Court Expert when more information is
 11 available. (*Id.*)

12 **III. THE COURT SHOULD DENY PLAINTIFFS’ REQUEST FOR AN ORDER TO REQUIRE**
 13 **CDCR TO SEEK A COURT ORDER FOR THE SUSPENSION OF STATE LAW**
 14 **BECAUSE IT IS PREMATURE, UNWARRANTED, AND POTENTIALLY VIOLATES THE**
PLRA.

15 The PLRA prohibits an order of “any prospective relief that requires or permits a
 16 government official to exceed his or her authority under State or local law or otherwise violates
 17 State or local law”, unless “(i) Federal law requires such relief to be ordered in violation of State
 18 or local law; (ii) the relief is necessary to correct the violation of a Federal right; and (iii) no other
 19 relief will correct the violation of the Federal right.” 18 U.S.C. § 3626(a)(1)(B).

20 Although Plaintiffs request an order directing CDCR to “request a court order suspending”
 21 “any provisions of state law” that prevent CDCR from enacting the remedies requested by
 22 Plaintiffs (ECF 3510-5 at 14), they fail to establish that no other relief—other than Plaintiffs’
 23 requested remedies—will correct the violations at issue in this action, as required by the PLRA.
 24 18 U.S.C. § 3626(a)(1)(B). To establish that “no other relief will correct” the violations of their
 25 Federal rights, Plaintiffs must show that those constitutional deficiencies cannot be resolved in
 26 the absence of the prospective relief requested by Plaintiffs. *See Coleman v. Schwarzenegger*,

922 F. Supp. 2d 882, 950–51 (E.D. Cal. 2009)¹. In *Coleman*, the Court ordered prospective relief that may require a waiver of state law only after finding that none of the available alternatives to a prison release order, including the continued efforts of the *Plata* Receiver and the *Coleman* Special Master, could bring the California prison system into constitutional compliance within a reasonable time-period. *Id.* In *Coleman*, numerous experts testified that the prospective relief ultimately ordered by the Court was a prerequisite to providing constitutionally adequate care to California prisoners. *Id.* Here, Plaintiffs have not established that the available alternatives to the relief they request—such as the remedies recommended by the Court Expert, or the remedies offered by Defendants and discussed above—cannot bring SATF into compliance. Accordingly, Plaintiffs fail to satisfy their burden under the PLRA. Therefore, the Court should not order any prospective relief that requires CDCR to violate or exceed its authority under State or local law. This Court should deny Plaintiffs’ request to direct CDCR to request any such waiver.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

¹ Although the *Coleman* court discussed “no other relief” requirement in the context of a “prison release order” under 18 USCA § 3626(a)(3)(E)(ii), the same analysis would apply to “no other relief” under 18 USCA § 3626(a)(1)(B)(iii).

CONCLUSION

Defendants have set forth concrete plans, timelines, and processes to address the Court Expert’s August 24, 2023, recommendations on accommodating deaf and hard-of-hearing and blind and low vision class members at SATF. Defendants have also updated related policies and have concrete timelines for implementation of other appropriate policies. Defendants continue to work with CCHCS, stakeholders, Plaintiffs, and the Court Expert to address these issues and ensure equal access to programs, services, and activities for class members. Because Defendants have actual plans, and not “plans to have a plan,” no further Court intervention or orders are required.

Dated: October 5, 2023

Respectfully submitted,

ROB BONTA
Attorney General of California
SHARON A. GARSKE
Supervising Deputy Attorney General

/s/ Trace O. Maiorino
TRACE O. MAIORINO
Deputy Attorney General
Attorneys for Defendants
Gavin Newsom and CDCR